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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
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9 GLENN FANE, ) 3:05-CV-0597-ECR (RAM)  
10 Plaintiff, )  
11 vs. )  
12 DR. THEODORE D'AMICO, )  
13 Defendant. )  
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**REPORT AND RECOMMENDATION**  
**OF U.S. MAGISTRATE JUDGE**

14 This Report and Recommendation is made to the Honorable Edward C. Reed, Jr.,  
15 Senior United States District Judge. The action was referred to the undersigned Magistrate  
16 Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR IB 1-4.

17 On December 13, 2006, Defendant Dr. D'Amico filed a Motion to Dismiss/Motion for  
18 Summary Judgment (Doc. #26). On January 8, 2007, the court notified Plaintiff of his failure  
19 to file an opposition to the Motion and gave him an additional thirty (30) days to comply  
20 (Doc. #28). On February 12, 2007, the court again notified Plaintiff of his failure to file an  
21 opposition to the Motion and gave him an additional twenty (20) days to comply (Doc. #29).  
22 To date, Plaintiff has failed to file an opposition to the Motion.

23 LR 7-2(d) provides that "The failure of an opposing party to file points and authorities  
24 in response to any motion shall constitute a consent to the granting of the motion."

25 Because Plaintiff has failed to oppose Defendant's Motion to Dismiss/Motion for  
26 Summary Judgment (Doc. #26), the Motion should be granted.

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## **RECOMMENDATION**

**IT IS THEREFORE RECOMMENDED** that the District Judge enter an order **GRANTING** Defendant Dr. D'Amico's Motion to Dismiss/Motion for Summary Judgment with prejudice (Doc. #26).

The parties should be aware of the following:

1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C) and Rule IB 3-2 of the Local Rules of Practice, specific written objections to this Report and Recommendation within ten (10) days of receipt. These objections should be titled “Objections to Magistrate Judge’s Report and Recommendation” and should be accompanied by points and authorities for consideration by the District Court.

2. That this Report and Recommendation is not an appealable order and that any notice of appeal pursuant to Rule 4(a)(1), Fed. R. Civ. P., should not be filed until entry of the District Court's judgment.

DATED: March 6, 2007.



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**UNITED STATES MAGISTRATE JUDGE**